

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**STRIKE 3 HOLDINGS, LLC, a
Delaware corporation,**

Plaintiff,

V.

JOHN DOE, subscriber assigned IP address 73.225.38.130,

Defendant.

No. 2:17-cv-01731-TSZ

**PLAINTIFF/COUNTER-
DEFENDANT'S MOTION FOR
APPROVAL OF BOND AND STAY
OF EXECUTION OF JUDGMENT**

Noted on Motion Calendar:
March 20, 2020

Plaintiff/Counter-Defendant, Strike 3 Holdings, LLC (“Strike 3” or “Plaintiff”), pursuant to Fed. R. Civ. P. 62 respectfully requests this Court’s approval of a supersedeas bond signed by United States Fire Insurance Company and a stay the execution of judgment in this matter until after the United States District Court of Appeals for the Ninth Circuit renders a final decision on Plaintiff’s appeal. In support, Plaintiff states as follows:

1. Federal Rule of Civil Procedure 62(b), in part, provides: "If an appeal is taken, the appellant may obtain a stay by supersedeas bond ... The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond." "Under Fed.R.Civ.P. 62(d), an appellant

1 may obtain a stay as a matter of right by posting a supersedeas bond acceptable to the
 2 court." *Matter of Combined Metals Reduction Co.*, 557 F.2d 179, 193 (9th Cir. 1977); *see*
 3 also *Am. Civil Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1066 (9th Cir. 2012).¹

4 2. LCR 65.1 states that "[e]very bond must be secured by either: (1) a monetary
 5 deposit equal to the amount of the bond, or (2) a corporation authorized by the Secretary of
 6 the Treasury of the United States to act as surety on official bonds under 31 U.S.C.
 7 §§ 9301–9306, which corporation shall have on file with the clerk one of the following: (i)
 8 proof that the corporation is incorporated in Washington, (ii) a copy of the power of
 9 attorney appointing a resident agent for service of process in this district, or (iii) proof that
 10 the corporation has a resident agent who is an official of the State of Washington authorized
 11 or appointed under Washington law to receive service of process on the corporation."

12 3. Fed. R. App. P. 8 states that "[a] party must ordinarily move first in the
 13 district court for * * * (A) a stay of the judgment or order of a district court pending appeal;
 14 (B) approval of a bond or other security provided to obtain a stay of judgment; or (C) an
 15 order suspending, modifying, restoring, or granting an injunction while an appeal is
 16 pending."

17 4. On February 3, 2020, this Court entered a Judgment in favor of Defendant
 18 John Doe and against Plaintiff Strike 3 Holdings, LLC on Defendant's first counterclaim,
 19 brought under 28 U.S.C. § 2201. Dkt. 189.

20 5. The Court's Judgment in the instant matter awarded Defendant John Doe
 21 reasonable attorney's fees in the amount of \$40,501.63, and costs in the amount of
 22 \$7,275.63, for a total of \$47,777.26. Dkt. 189.

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 24 1 Federal Rule of Civil Procedure 62 was amended in 2018, wherein "Subdivision 62(b) carries forward in
 25 modified form the supersedeas bond provisions of former Rule 62(d)." Fed. R. Civ. P. 62 advisory
 26 committee's note to 2018 amendments. The modification of this provision did not change its purpose. *See*
Oskowis v. Sedona Oak-Creek Unified Sch. Dist. #9, No. 17-08070, 2019 WL 6250762, at *1 (D. Ariz. Nov.
 22, 2019).

1 6. On March 2, 2020, Plaintiff filed its Notice of Appeal in this matter. Dkt.
 2 No. 190.

3 7. Through Jurisco, Inc., Plaintiff has furnished a supersedeas bond with United
 4 States Fire Insurance Company as surety in the sum of forty-nine thousand, nine hundred
 5 and seventy dollars and twenty-three cents (\$49,970.23). *See Exhibit 1 attached hereto.*

6 8. The supersedeas bond in the amount of \$49,970.23 adequately secures both
 7 the sum of the judgment, \$47,777.26, and post-judgment interest on the judgment is
 8 adequately secured by an additional 4.59% over the judgment, \$2192.97, which represents
 9 over 3 years of potential interest. *See Holzhauer v. Golden Gate Bridge Highway &*
 10 *Transp. Dist.*, No. 13-02862, 2017 WL 3388319, at *4 (N.D. Cal. Aug. 7, 2017) (finding
 11 that two years of post-judgment interest an appropriate estimate for a supersedeas bond).

12 9. For the foregoing reasons, Plaintiff respectfully requests that this Court: (1)
 13 Approve the supersedeas bond signed by United States Fire Insurance Company in this
 14 matter or in the alternative propose a form of acceptable bond or surety; (2) stay the
 15 execution of judgment in this matter until after the United States District Court of Appeals
 16 for the Ninth Circuit renders a final decision on Plaintiff's appeal; and (3) grant such other
 17 and further relief as the Court deems just and proper.

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1 DATED this 2nd day of March, 2020

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LAW OFFICES OF
LINCOLN BANDLOW, PC

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8 By: /s/ Lincoln Bandlow
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THE ATKIN FIRM, LLC

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ARETE LAW GROUP PLLC

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14 By: /s/ Jeremy E. Roller
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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, Jeremy Roller, hereby certify that on March 2, 2020, I electronically filed the
3 foregoing document with the Clerk of the Court using the CM/ECF system which will send
4 notification of filing to the following parties:

5 Adrienne D. McEntee, WSBA #34061
6 Beth E. Terrell, WSBA #26759
7 Email: bterrell@terrellmarshall.com
amcentee@terrellmarshall.com
8 936 North 34th Street, Suite 300
9 Seattle, Washington 98103-8869
10 Telephone: (206) 816-6603
11 Facsimile: (206) 319-5450

12 J. Curtis Edmondson, WSBA #43795
13 Email: jcedmondson@edmolaw.com
14 EDMONDSON IP LAW
15 399 NE John Olsen Avenue Hillsboro
16 Oregon 97124
17 Telephone: (503) 336-3749

18 *Attorneys for Defendant*

19 DATED this 2nd day of March 2020 at Seattle, Washington.

20 _____
21 /s/ *Jeremy E. Roller*
22 _____
23 Jeremy E. Roller
24
25
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EXHIBIT 1

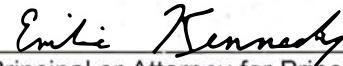
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRIKE 3 HOLDINGS, LLC,)
vs Plaintiff(s),) Case No. C17-1731 TSZ
JOHN DOE (73.225.38.130),)
Defendant(s)) Supersedeas/Appeal Bond
No.: 602-126453-7

WE, STRIKE 3 HOLDINGS, LLC, as Principal, and UNITED STATES FIRE INSURANCE COMPANY, as Surety, are bound to LAW OFFICES OF J. CURTIS EDMONDSON, PLLC, ON BEHALF OF JOHN DOE, as Obligee, jointly and severally in the sum of \$49,970.23, for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

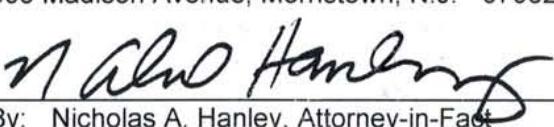
THE CONDITION OF THIS BOND, is that if the Principal shall satisfy any money judgment contained in the above case in full, including, if allowed by law, costs, interest, attorney's fees and damages for delay in the event an appeal of said order/judgment is dismissed or is affirmed, but in no event to exceed the penalty amount set out above, then this obligation shall be null and void; otherwise, to remain in full force and effect.

Signed and sealed this 28th day February, 2020



Principal or Attorney for Principal

United States Fire Insurance Company
305 Madison Avenue, Morristown, N.J. 07962



By: Nicholas A. Hanley, Attorney-in-Fact
and General Lines P&C Agent

APPROVED BY ME ON THIS

DAY OF _____, 20_____

(Judge)(Clerk)

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

06762442020

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Nicholas A. Hanley, April M. Reagan

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Seven Million, Five Hundred Thousand Dollars (\$7,500,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV. Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

- (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;
- (b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III. Officers. Section 3.11. Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 22nd day of August 2019.

UNITED STATES FIRE INSURANCE COMPANY



Anthony R. Slimowicz, Executive Vice President

State of Pennsylvania }
County of Philadelphia }

On this 22nd day of August 2019, before me, a Notary public of the State of Pennsylvania, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

Commonwealth of Pennsylvania – Notary Seal
Tamara Watkins, Notary Public
Philadelphia County
My commission expires August 22, 2023
Commission number 1348843

Tamara Watkins

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 28 day of Feb. 2020

UNITED STATES FIRE INSURANCE COMPANY



Al Wright, Senior Vice President